

## **REMARKS**

Reconsideration and reversal of the rejections presented in the Office Action dated September 22, 2004 are respectfully requested in light of the following.

Initially, applicant notes with appreciation the Examiner's comprehensive review of the present application and search of the prior art. In light of the Examiner's thoughtful comments, the present application has been amended to better define and more clearly recite the present invention.

Claims 1-24 are solicited, wherein claims 1, 9, 15, and 21 are presented in independent form. Claim 9 has been amended to better define the present invention by further defining the structure and related functionality of the reinforcing member. Claim 10 has also been amended to more clearly recite the exemplary uses of the flexible armor member.

Paragraphs [0024.1] and [0024.2] have been added to describe new Figs. 6A and 6B, respectively. Similarly, paragraph [0040] has been amended to include language describing newly added Figs. 6A and 6B. The addition of Figs. 6A and 6B, and the accompanying language describing these figures, has support in the application as originally filed. For example, support may be found at paragraph [0013] beginning at page 3, line 5, and at paragraph [0040] beginning at page 7, line 21, of the specification, and in originally solicited claims 6 and 10.

Paragraphs [0044] and [0050] have been amended to correct the informalities as noted by the Examiner.

As noted above, new Figs. 6A and 6B are provided to show an illustrative embodiment vest of claim 6, and an illustrative embodiment flexible armor member of claim 10, respectively.

The Examiner has rejected claims 1-6 and 9-18 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 2,009,325 to Sachs (hereinafter "Sachs").

Sachs discloses a belt body A including three layers of fabric 1, 2 and 3, secured together throughout their length. The intermediate layer 2 of the belt body A may be composed of cotton, canvas, duck or other material. Likewise, the outer layers 1 and 3 may be composed of cotton, silk, or other fabric or other material, and are preferably contrasted in color to provide for a reversal of the belt body A. In practice, one outer layer may be composed of leather, and the other outer layer may be composed of fabric. The longitudinal edges of the adhered three-ply body are secured together in any substantial manner, preferably by means of round fabric braids

4 and 5. These braids 4 and 5 reinforce the belt body A and are secured thereto preferably by stitching. They may be stitched to the belt body A by means of zigzag stitching as indicated at 6 and 7, respectively. The connection with the belt body A may be effected by a straight stitch, as at 8, instead of the zigzag type of stitch 67.

The round braids or cord edges 4 and 5 strengthen the belt body A and give an edge finish to the same. These braids 4 and 5 are preferably contrasted in color with the other colors of the belt body A. A reversible type buckle 9 is pivotally secured to one end of the belt body A by means of a leather or other connecting means 10. It is understood that the belt body A may be edged for ornamental and strengthening purposes and the belt thereby readily reversible in use.

Sachs provides no disclosure of the combination of elements recited in independent claim 1. Moreover, Sachs fails to disclose a garment made of ballistic material. There is simply no disclosure in Sachs of a garment made of a ballistic material, either alone or in combination with a reinforcing member secured proximate a peripheral edge of the garment and configured to provide roll protection to the peripheral edge of the garment in response to impact from a projectile. Sachs discloses that the belt body may be composed of cotton, canvas, duck or other material, but provides no hint or suggestion of a ballistic material being used therein. Further, while in Sachs round braids or cord edges 4 and 5 are used to strengthen the belt body and give an edge finish thereto, there is no disclosure that these cord edges 4 and 5 are configured to provide roll protection. More particularly, the alleged strengthening of the belt body in Sachs appears to be related solely to securing together the various layers of fabric along their longitudinal edges. Assuming, *arguendo*, that the cord edges 4 and 5 provide edge strength, this at most prevents rolling the edge along the length of the belt. At most, the belt in Sachs would prevent the edge from rolling away from the body due to movement by the wearer or from forces of *avordupois*. There is no disclosure, much less any hint or suggestion, that these cords could be used to contain high speed projectiles. Sachs provides no hint or suggestion that the belt disclosed therein is configured for ballistic protection purposes, as opposed to securing pants and providing an aesthetically pleasing appearance.

It is well-known that "anticipation under 35 U.S.C. § 102 requires the disclosure in a single piece of prior art of each and every limitation of a claimed invention." Apple Computer, Inc. v. Articulate Systems, Inc., 57 USPQ2d 1057, 1061 (Fed. Cir. 2000), *citing Electromed Sys.*

S.A. v. Cooper Life Sciences, 32 USPQ2d 1017, 1019 (Fed. Cir. 1994). Further, Federal Circuit decisions have held that a prior art publication must be enabling in order to defeat novelty, that is to constitute and anticipation. "To anticipate, the reference must ... enable one of skill in the art to make and use the claimed invention." Transclean Corp. v. Bridgewood Services, Inc., 62 USPQ2d 1865, 1869 (Fed. Cir. 2002); Bristol-Meyers Squib Co. v. Ben Venue Laboratories, Inc., 58 USPQ2d 1508, 1512 (Fed. Cir. 2001).

In short, the Examiner has failed to establish a *prima facie* case of anticipation. As detailed above, Sachs fails to disclose a ballistic protection apparatus, much less a garment made of ballistic material either alone, or in combination with a reinforcing member configured to provide roll protection to the peripheral edge of the garment in response to impact from a projectile. For at least this reason, it is respectfully submitted that claim 1, and the claims dependent therefrom, are in condition for allowance.

Likewise, Sachs provides no disclosure of the elements recited in amended independent claim 9. More particularly, Sachs fails to provide any disclosure, much less any hint or suggestion, of a flexible armor member alone, or in combination with, a flexible reinforcing member configured to provide roll protection to the peripheral edge of the flexible armor member in response to impact from a projectile by capturing the projectile between the flexible armor member and the reinforcing member. As such, for the reasons detailed above with respect to claim 1, it is respectfully submitted that claim 9, and the claims dependent therefrom, are in condition for allowance.

Additionally, Sachs provides no disclosure of the ballistic belt as recited in independent claim 15. For the reasons detailed above with respect to claim 1, Sachs provides no hint or suggestion of a central portion of ballistic material, either alone or in combination upper and lower edge portions of ballistic material coupled to the central portion. Again, Sachs fails to disclose a ballistic belt having the structural features recited in independent claim 15. As such, it is respectfully submitted that claim 15, and the claims dependent therefrom, are in condition for allowance.

Claims 9-11 and 14 have been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,463,929 to Mejia (hereinafter "Mejia").

Mejia discloses an armoring material assembly 10 including an armor member 11 coupled to a frame 12, which is configured to absorb impact of ballistic projectiles. As noted by the Examiner, the metal reinforcing member or frame 12 has a stiffness greater than that of the armor member 11.

Mejia fails to disclose the combination of elements now recited in amended claim 9. More particularly, Mejia fails to disclose a flexible reinforcing member located proximate the peripheral edge of the flexible armor member. Mejia's system is rigid in that it cannot easily conform to irregular shapes such as motor vehicle doors. The present invention as recited in claim 9 includes a flexible reinforcing member which is adapted to conform to the shape taken by the flexible armor member as shown in Fig. 1. For this reason alone, it is respectfully submitted that amended claim 9 is allowable over Mejia.

Additionally, Mejia fails to disclose a flexible reinforcing member configured to provide roll protection to the peripheral edge of the flexible armor member in response to impact from a projectile by capturing the projectile between the flexible armor member and the reinforcing member, as now recited in claim 9. Instead, as shown in Figs. 27A-27D of the Mejia reference, the frame 12 itself is used to capture the projectile. For this additional reason, it is respectfully submitted that amended claim 9, and the claims dependent therefrom, are in condition for allowance.

Claims 7 and 19 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Sachs in view of U.S. Patent No. 3,908,571 to Motsenbocker (hereinafter "Motsenbocker").

Initially, it is noted that Motsenbocker fails to overcome the deficiencies of the primary reference Sachs as recited in independent claims 1 and 15, above. For this reason alone, it is respectfully submitted that claims 7 and 19 are in condition for allowance over Motsenbocker, either alone or in combination with Sachs. Further, one of ordinary skill in the art in ballistic protection would not be motivated to look at the art of strapping or harness design as disclosed in Motsenbocker. Given that Motsenbocker is non-analogous art, it is respectfully submitted that claims 7 and 19 are further allowable over this reference.

Claim 8 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Sachs in view of U.S. Patent Application Publication No. US 2002/0074185 to Colorado (hereinafter "Colorado").

It is respectfully submitted that the Colorado reference fails to overcome the deficiencies of the primary Sachs patent. For this reason alone, it is respectfully submitted that claim 8 is further allowable over this reference.

Claim 20 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Sachs in view of U.S. Patent No. 4,941,237 to Hovis (hereinafter "Hovis").

Hovis fails to overcome the deficiencies of the primary reference, Sachs. For this reason alone, it is respectfully submitted that claim 20 is in condition for allowance.

Claims 21, 22, and 24 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Sachs in view of Motsenbocker.

Neither Sachs nor Motsenbocker, alone or in combination, provide any hint or suggestion of the combination of elements recited in independent claim 21. More particularly, none of the cited references disclose a ballistic belt including a central portion of ballistic material. Since this element is missing in its entirety, applicant fails to see how combining the references would motivate one of ordinary skill in the art to arrive at the applicant's invention. For this reason alone, it is respectfully submitted that claim 21, and the claims dependent therefrom, are in condition for allowance. Furthermore, as noted above, Motsenbocker would not motivate one of ordinary skill in the art in ballistic belts to provide an outer cover substantially surrounding the central portion of ballistic material and upper and lower edge portions coupled to the central portion. Motsenbocker relates to the art of strapping or harness design and not to garments, much less ballistic belts. For this additional reason, it is respectfully submitted that claim 21 is properly allowable.

Claim 23 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Sachs in view of Motsenbocker as applied to claim 21, and further in view of Hovis. It is respectfully submitted that Hovis fails to overcome the deficiencies of the Sachs and Motsenbocker references as applied to claim 21. For this reason alone, it is respectfully submitted that claim 23 is in condition for allowance.

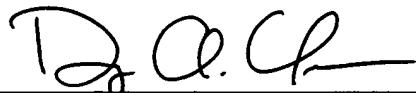
In view of the foregoing, it is respectfully submitted that all of the solicited claims are in condition for allowance. Such, action is respectfully requested.

If necessary, applicants request that this response be considered a request for an extension of time appropriate for the response to be timely filed. Applicants request that any required fees

needed beyond those submitted with this amendment be charged to the account of Baker & Daniels, Deposit Account No. 02-0390.

The Examiner is invited to contact the undersigned at the telephone number provided below should any question or comment arise during reconsideration of this matter.

Respectfully submitted,



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**Amendments to the Drawings:**

The attached sheet of drawings includes new Figs. 6A and 6B. This new sheet 4A shows an illustrative embodiment vest of claim 6, and an illustrative embodiment flexible armor of claim 10 configured for use as a shield or mat.

Attachment: Replacement sheet